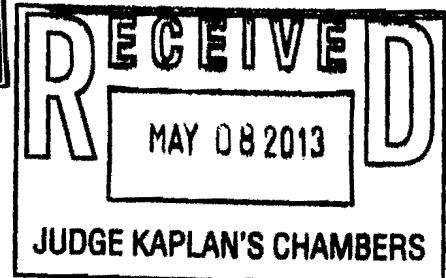


Kaplan, Y.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
IN RE INDYMAC MORTGAGE-BACKED  
SECURITIES LITIGATION

Master Docket No.  
09-CIV-04583 (LAK)

----- X  
THIS DOCUMENT RELATES TO:  
ALL ACTIONS

**STIPULATION AND [PROPOSED] ORDER REGARDING LEAD PLAINTIFFS'  
ANTICIPATED MOTION TO AMEND CLASS CERTIFICATION ORDER**

**WHEREAS**, on December 10, 2010, Lead Plaintiffs filed a Motion for Certification and Appointment of Class Representatives and Class Counsel ("Motion for Class Certification") (Dkt. 276-1) for the following ten offerings: INABS 2006-D, INDA 2006-AR2, INDA 2007-AR7, INDX 2006-AR15, RMBT 2006-L2, INDX 2006-AR11, INDX 2006-AR29, INDX 2006-AR35, INDX 2006-FLX1, and INDX 2006-AR14;

**WHEREAS**, on June 21, 2011, this Court issued a Memorandum Opinion granting in part and denying in part motions to intervene filed by six proposed intervenors, including the Police and Fire Retirement System of the City of Detroit ("PFRS") and City of Philadelphia Board of Pensions and Retirement ("Philadelphia");

**WHEREAS**, on August 15, 2011, Lead Plaintiffs filed a Second Amended Consolidated Class Action Complaint, which added PFRS and Philadelphia as named plaintiffs and asserted Section 12(a)(2) claims relating to INDX 2007-AR5, INDA 2007-AR1, and INDA 2007-AR3;

**WHEREAS**, on August 17, 2012, this Court issued a Memorandum Opinion granting in part and denying in part Lead Plaintiffs' Motion for Class Certification (the "Class Certification Order");

**WHEREAS**, the Class Certification Order dismissed claims relating to INDX 2006-AR11, and granted certification of a class comprised of investors in securities issued in the following nine offerings: INABS 2006-D, INDA 2006-AR2, INDA 2007-AR7, INDX 2006-AR15, RMBT 2006-L2, INDX 2006-AR29, INDX 2006-AR35, INDX 2006-FLX1, and INDX 2006-AR14;

**WHEREAS**, neither Lead Plaintiffs' Motion for Class Certification nor the Class Certification Order addressed the putative class claims of PFRS and Philadelphia under Section 12(a)(2) relating to INDX 2007-AR5, INDA 2007-AR1, or INDA 2007-AR3 (ECF No. 367 at 8 n.34);

**WHEREAS**, on October 12, 2012, Lead Plaintiffs filed a Motion for Reconsideration (Dkt. 375-378) seeking to reinstate claims relating to 42 offerings of mortgage pass-through certificates listed in Appendix A of their supporting Memorandum of Law (Dkt. 376-1);

**WHEREAS**, on November 16, 2012, the Court denied Lead Plaintiffs' Motion for Reconsideration without prejudice to its renewal after the Supreme Court's resolution of the petition for a writ of certiorari in *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012) ("NECA-IBEW");

**WHEREAS**, on March 13, 2013, the Supreme Court denied the petition for a writ of certiorari in *NECA-IBEW*;

**WHEREAS**, in the wake of the Supreme Court's denial of the petition for a writ of certiorari in *NECA-IBEW*, Lead Plaintiffs have indicated their intent to renew their Motion for Reconsideration;

**WHEREAS**, in the event that the Court grants Lead Plaintiffs' renewed Motion for Reconsideration in part or in whole, Lead Plaintiffs intend to move the Court to amend its

Class Certification Order so that the certified class encompasses purchasers deemed to have "class standing" under *NECA-IBEW*, including purchasers of the INDX 2007-AR5, INDA 2007-AR1, and INDA 2007-AR3 certificates for which PFRS and Philadelphia brought claims under Section 12(a)(2);

**WHEREAS**, Defendants intend to oppose any motion to amend the Class Certification Order;

**WHEREAS**, on March 26, 2013, the Court entered an order (i) staying all proceedings in this action for sixty (60) days in order for the parties to engage in settlement discussions; (ii) setting a status conference for May 9, 2013 at 4:00 p.m.; (iii) directing the parties to submit a joint status report by May 2, 2013; and (iv) directing the parties, in the event they believe they are unlikely to achieve a settlement in principle by May 9, 2013, to meet and confer and submit with their joint status report any stipulations that can be reached with regard to issues that would otherwise be raised in connection with Lead Plaintiffs' Motion for Reconsideration or Lead Plaintiffs' Motion to Amend Class Certification Order;

**WHEREAS**, on April 29, 2013, Lead Plaintiffs and the Remaining Underwriter Defendants participated in a mediation before the Honorable Edward A. Infante (Ret.);

**WHEREAS**, the mediation did not result in a settlement, and Lead Plaintiffs and the Remaining Underwriter Defendants believe it is unlikely that they will achieve a settlement in principle by May 9, 2013; and

**WHEREAS**, the parties have met and conferred concerning Lead Plaintiffs' anticipated Motion to Amend Class Certification Order.

**IT IS HEREBY STIPULATED AND AGREED**, by and between the parties, through their undersigned counsel, that:

1. With regard to any motion that Lead Plaintiffs may file to amend the Class Certification Order in order to expand the certified class to encompass purchasers of INDX 2007-AR5 certificates and/or purchasers of securities issued in the offerings listed in Appendix A of Lead Plaintiffs' Motion for Reconsideration (Dkt. 376-1), the Remaining Underwriter Defendants will not argue that the proposed expanded class does not satisfy the numerosity requirement of Federal Rule of Civil Procedure Rule 23(a).

2. This Stipulation is without prejudice to or waiver of any of the parties' rights, and the parties expressly reserve any and all rights with respect to any argument that may be made in this litigation, including, but not limited to, the right to challenge in this Court or on appeal class certification rulings in this action.

Dated: May 2, 2013

**BERMAN DEVALERIO**

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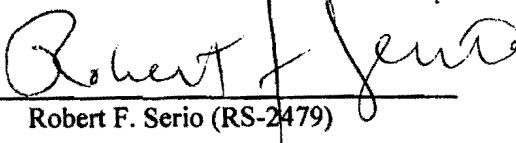
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*Counsel for Lead Plaintiffs*

Dated: May 2, 2013

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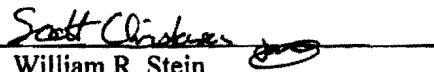
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*Attorneys for the  
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Dated: May 2, 2013

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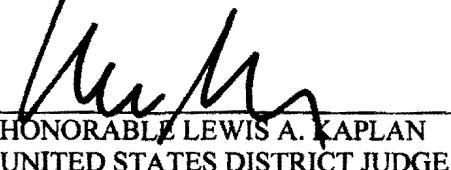
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*Attorneys for Defendant IndyMac MBS, Inc.*

SO ORDERED.

Dated: 5/9/13

By:

  
HONORABLE LEWIS A. KAPLAN  
UNITED STATES DISTRICT JUDGE

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